

EXHIBIT D

Damian Capozzola/Los Angeles/Kirkland-Ellis
02/13/2006 11:22 AM

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cc Allison Andrews/Los Angeles/Kirkland-Ellis@K&E; Ed
bcc Yep/Los Angeles/Kirkland-Ellis@K&E; Neal San Diego/Los Angeles/Kirkland-Ellis@K&E
Subject RE: Misc. 

On 1/20/2006 the Court allowed Mr. Ueno to submit his self-described supplemental report over objection. At Mr. Ueno's deposition on 1/23/2006, you provided a disc with the data Mr. Ueno represented he used as the basis for adding to his original report. The data was in your position since September 2005. In the minutes from the 1/24/2006 hearing the Court ruled: "Any defense expert may amend or supplement his report in light of ANY amended report by Mr. Ueno." (emphasis added). Unless you are withdrawing Mr. Ueno's supplemental report, we will respond with Mr. Kinrich's supplement. You should appreciate the fact that we are providing you with the response in advance of trial, in part to allow Mr. Ueno to consider whether he wishes to withdraw the report or withdraw as your expert once he considers the points raised by Mr. Kinrich.

Please advise me at your earliest convenience if you wish to depose Mr. Kinrich in Los Angeles on February 21. You may change your mind later about whether you will take a deposition, but we should at least schedule the deposition now so all parties are on notice.

--Damian Capozzola

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02/13/2006 10:03 AM

To "Damian Capozzola" <dcapozzola@kirkland.com>
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What is your basis for supplementing his report? It's too late to fix it.

Tim Hogan

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From: Damian Capozzola [<mailto:dcapozzola@kirkland.com>]
Sent: Monday, February 13, 2006 7:58 AM
To: Timothy J. Hogan
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Subject: RE: Misc.

Mr. Hogan:

Please be advised that we will submit a supplemental report from Mr. Kinrich by February 17. addressing Mr. Ueno's first supplemental report and the information you provided at Mr. Ueno's January 23, 2006 deposition. If you wish to depose Mr. Kinrich, he will be available in Los Angeles on February 21.

Thank you for your attention to these matters.

--Damian Capozzola

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